

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
AT CLARKSBURG**

**WALHONDE TOOLS, INC.**

**Plaintiff,**

**v.**

**Civil Action No. 1:09-cv-00048**

**WILSON WORKS, INC., a West Virginia Corporation; NORTHCO CORP., a West Virginia Corporation; NAES POWER CONTRACTORS, INC., successor by merger to American Boiler & Chimney Company, a Washington Corporation; MINNOTTE CONTRACTING CORPORATION, a Pennsylvania Corporation; FOSTER WHEELER ZACK, INC., a Delaware Corporation; DAY & ZIMMERMANN NPS, INC., a Delaware Corporation,**

**Defendants.**

**JOINT MOTION TO DISMISS DEFENDANT DAY & ZIMMERMANN NPS, INC.**

Plaintiff Walhonde Tools, Inc. and Defendant Day & Zimmermann NPS, Inc., jointly move the Court, pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, for an Order dismissing Defendant Day & Zimmermann NPS, Inc. from this civil action with prejudice, on the grounds that Plaintiff Walhonde Tools, Inc. and Defendant Day & Zimmermann NPS, Inc. have compromised and settled all of the Plaintiff's claims and matters in controversy between them.

Further, Plaintiff Walhonde Tools, Inc. and Defendant Day & Zimmerman NPS, Inc. jointly move, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, that the Court direct the entry of a final judgment concerning the dismissal of Defendant Day & Zimmermann NPS, Inc., on the grounds that Plaintiff Walhonde Tools, Inc. and Defendant Day &

Zimmermann NPS, Inc. have entered into a voluntary settlement, that no other defendants have asserted cross-claims against Defendant Day & Zimmermann NPS, Inc., and that there is no just reason for delay in the entry of a final judgment dismissing Defendant Day & Zimmermann NPS, Inc. from this civil action.

The proposed Stipulation and Order of Dismissal is attached.

WALHONDE TOOLS, INC. and  
DAY & ZIMMERMANN NPS, INC.  
By counsel

/s/ Robert R. Waters  
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Day & Zimmermann NPS, Inc.

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**WILSON WORKS, INC., a West Virginia Corporation; NORTHCO CORP., a West Virginia Corporation; NAES POWER CONTRACTORS, INC., successor by merger to American Boiler & Chimney Company, a Washington Corporation; MINNOTTE CONTRACTING CORPORATION, a Pennsylvania Corporation; FOSTER WHEELER ZACK, INC., a Delaware Corporation; DAY & ZIMMERMANN NPS, INC., a Delaware Corporation,**

**Defendants.**

**CERTIFICATE OF SERVICE**

I, John C. Palmer IV, counsel for defendant Day & Zimmermann NPS, Inc., do hereby certify that on the 13<sup>th</sup> day of October, 2010, I electronically filed the **JOINT MOTION TO DISMISS DEFENDANT DAY & ZIMMERMANN NPS, INC.** with the Clerk of this Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participants:

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and that there are no non-CM/ECF participants in this matter.

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